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KEN BENNETT
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CHAPTER 272

SENATE BILL 1182

AN ACT

AMENDING SECTIONS 36-501, 36-514, 36-537, 36-538, 36-539, 36-540, 36-545.04
AND 36-546, ARIZONA REVISED STATUTES; RELATING TO MENTAL HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-501, Arizona Revised Statutes, is amended to
3 read:

4 36-501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Admitting officer" means a psychiatrist or other physician OR
7 PSYCHIATRIC AND MENTAL HEALTH NURSE PRACTITIONER with experience in
8 performing psychiatric examinations who has been designated as an admitting
9 officer of the evaluation agency by the person in charge of the evaluation
10 agency.

11 2. "Chief medical officer" means the chief medical officer under the
12 supervision of the superintendent of the state hospital.

13 3. "Contraindicated" means that access is reasonably likely to
14 endanger the life or physical safety of the patient or another person.

15 4. "Court" means the superior court in the county in this state in
16 which the patient resides or was found prior to BEFORE screening or emergency
17 admission under provisions of this title.

18 5. "Danger to others" means that the judgement JUDGMENT of a person
19 who has a mental disorder is so impaired that he THE PERSON is unable to
20 understand his THE PERSON'S need for treatment and as a result of his THE
21 PERSON'S mental disorder his THE PERSON'S continued behavior can reasonably
22 be expected, on the basis of competent medical opinion, to result in serious
23 physical harm.

24 6. "Danger to self":

25 (a) Means behavior that, as a result of a mental disorder: —

26 ~~(a)~~ (i) Constitutes a danger of inflicting serious physical harm upon
27 ON oneself, including attempted suicide or the serious threat thereof, if the
28 threat is such that, when considered in the light of its context and in light
29 of the individual's previous acts, it is substantially supportive of an
30 expectation that the threat will be carried out.

31 ~~(b)~~ (ii) Behavior that, as a result of a mental disorder, will,
32 Without hospitalization, WILL result in serious physical harm or serious
33 illness to the person. , except that this definition shall

34 (b) DOES not include behavior that establishes only the condition of
35 gravely disabled.

36 7. "Department" means the department of health services.

37 8. "Deputy director" means the deputy director of the division of
38 behavioral health in the department of health services.

39 9. "Detention" means the taking into custody of a patient or proposed
40 patient.

41 10. "Director" means the director of the department.

42 11. "Division" means the division of behavioral health in the
43 department.

1 12. "Evaluation" means a professional multidisciplinary analysis based
2 on data describing the person's identity, biography and medical,
3 psychological and social conditions carried out by a group of persons
4 consisting of not less than the following:

5 (a) Two licensed physicians, who shall be qualified psychiatrists, if
6 possible, or at least experienced in psychiatric matters, and who shall
7 examine and report their findings independently. The person against whom a
8 petition has been filed shall be notified that ~~he~~ THE PERSON may select one
9 of the physicians. A psychiatric resident in a training program approved by
10 the American medical association or by the American osteopathic association
11 may examine the person in place of one of the psychiatrists if ~~he~~ THE
12 RESIDENT is supervised in the examination and preparation of the affidavit
13 and testimony in court by a qualified psychiatrist appointed to assist in ~~his~~
14 THE RESIDENT'S training, and if the supervising psychiatrist is available for
15 discussion with the attorneys for all parties and for court appearance and
16 testimony if requested by the court or any of the attorneys.

17 (b) Two other individuals, one of whom, if available, shall be a
18 psychologist and in any event a social worker familiar with mental health and
19 human services that may be available placement alternatives appropriate for
20 treatment. An evaluation may be conducted on an inpatient basis, an
21 outpatient basis or a combination of both, and every reasonable attempt shall
22 be made to conduct the evaluation in any language preferred by the person.

23 13. "Evaluation agency" means a health care agency that is licensed by
24 the department and that has been approved pursuant to this title, providing
25 those services required of such agency by this chapter.

26 14. "Examination" means an exploration of the person's past psychiatric
27 history and of the circumstances leading up to the person's presentation, a
28 psychiatric exploration of the person's present mental condition and a
29 complete physical examination.

30 15. "Family member" means a spouse, parent, adult child, adult sibling
31 or other blood relative of a person undergoing treatment or evaluation
32 pursuant to this chapter.

33 16. "Gravely disabled" means a condition evidenced by behavior in which
34 a person, as a result of a mental disorder, is likely to come to serious
35 physical harm or serious illness because ~~he~~ THE PERSON is unable to provide
36 for ~~his~~ THE PERSON'S OWN basic physical needs.

37 17. "Health care decision maker" has the same meaning prescribed in
38 section 12-2801.

39 18. "Health care entity" means a health care provider, the department,
40 the Arizona health care cost containment system ADMINISTRATION or a regional
41 behavioral health authority under contract with the department.

42 19. "Health care provider" means a health care institution as defined
43 in section 36-401 that is licensed as a behavioral health provider pursuant
44 to department rules or a mental health provider.

1 20. "Independent evaluator" means a licensed physician, PSYCHIATRIC AND
2 MENTAL HEALTH NURSE PRACTITIONER or psychologist selected by the person to be
3 evaluated or by such person's attorney.

4 21. "Informed consent" means a voluntary decision following
5 presentation of all facts necessary to form the basis of an intelligent
6 consent by the patient or guardian with no minimizing of known dangers of any
7 procedures.

8 22. "Least restrictive treatment alternative" means the treatment plan
9 and setting that infringe in the least possible degree with the patient's
10 right to liberty and that are consistent with providing needed treatment in a
11 safe and humane manner.

12 23. "Licensed physician" means any medical doctor or doctor of
13 osteopathy who is either:

14 (a) Licensed in this state.

15 (b) A full-time hospital physician licensed in another state and
16 serving on the staff of a hospital operated or licensed by the United States
17 government.

18 24. "Medical director of an evaluation agency" means a psychiatrist, or
19 other licensed physician experienced in psychiatric matters, who is
20 designated in writing by the governing body of the agency as the person in
21 charge of the medical services of the agency for the purposes of this chapter
22 and may include the chief medical officer of the state hospital.

23 25. "Medical director of a mental health treatment agency" means a
24 psychiatrist, or other licensed physician experienced in psychiatric matters,
25 who is designated in writing by the governing body of the agency as the
26 person in charge of the medical services of the agency for the purposes of
27 this chapter and includes the chief medical officer of the state hospital.

28 26. "Mental disorder" means a substantial disorder of the person's
29 emotional processes, thought, cognition or memory. Mental disorder is
30 distinguished from:

31 (a) Conditions that are primarily those of drug abuse, alcoholism or
32 mental retardation, unless, in addition to one or more of these conditions,
33 the person has a mental disorder.

34 (b) The declining mental abilities that directly accompany impending
35 death.

36 (c) Character and personality disorders characterized by lifelong and
37 deeply ingrained antisocial behavior patterns, including sexual behaviors
38 that are abnormal and prohibited by statute unless the behavior results from
39 a mental disorder.

40 27. "Mental health provider" means any physician or provider of mental
41 health or behavioral health services involved in evaluating, caring for,
42 treating or rehabilitating a patient.

43 28. "Mental health treatment agency" means the state hospital or a
44 health care agency that is licensed by the department and that provides those
45 services that are required of the agency by this chapter.

1 29. "Outpatient treatment" or "combined inpatient and outpatient
2 treatment" means any treatment program not requiring continuous inpatient
3 hospitalization.

4 30. "Outpatient treatment plan" means a treatment plan that does not
5 require continuous inpatient hospitalization.

6 31. "Patient" means any person undergoing examination, evaluation or
7 behavioral or mental health treatment under ~~the provisions of~~ this chapter.

8 32. "Peace officers" means sheriffs of counties, constables, marshals
9 and policemen of cities and towns.

10 33. "Persistently or acutely disabled" means a severe mental disorder
11 that meets all the following criteria:

12 (a) If not treated has a substantial probability of causing the person
13 to suffer or continue to suffer severe and abnormal mental, emotional or
14 physical harm that significantly impairs judgment, reason, behavior or
15 capacity to recognize reality.

16 (b) Substantially impairs the person's capacity to make an informed
17 decision regarding treatment, and this impairment causes the person to be
18 incapable of understanding and expressing an understanding of the advantages
19 and disadvantages of accepting treatment and understanding and expressing an
20 understanding of the alternatives to the particular treatment offered after
21 the advantages, disadvantages and alternatives are explained to that person.

22 (c) Has a reasonable prospect of being treatable by outpatient,
23 inpatient or combined inpatient and outpatient treatment.

24 34. "Prepetition screening" means the review of each application
25 requesting court-ordered evaluation, including an investigation of facts
26 alleged in such application, an interview with each applicant and an
27 interview, if possible, with the proposed patient. The purpose of the
28 interview with the proposed patient is to assess the problem, explain the
29 application and, when indicated, attempt to persuade the proposed patient to
30 receive, on a voluntary basis, evaluation or other services.

31 35. "Prescribed form" means a form established by a court or the rules
32 of the division that have been approved by the director or in accordance with
33 the laws of this state.

34 36. "Professional" means a physician WHO IS licensed pursuant to title
35 32, chapter 13 or 17, ~~or~~ a psychologist WHO IS licensed pursuant to title 32,
36 chapter 19.1 OR A PSYCHIATRIC AND MENTAL HEALTH NURSE PRACTITIONER WHO IS
37 CERTIFIED PURSUANT TO TITLE 32, CHAPTER 15.

38 37. "Proposed patient" means a person for whom an application for
39 evaluation has been made or a petition for court-ordered evaluation has been
40 filed.

41 38. "PSYCHIATRIC AND MENTAL HEALTH NURSE PRACTITIONER" MEANS A
42 REGISTERED NURSE PRACTITIONER AS DEFINED IN SECTION 32-1601 WHO HAS COMPLETED
43 AN ADULT OR FAMILY PSYCHIATRIC AND MENTAL HEALTH NURSE PRACTITIONER PROGRAM
44 AND WHO IS CERTIFIED AS AN ADULT OR FAMILY PSYCHIATRIC AND MENTAL HEALTH
45 NURSE PRACTITIONER BY THE STATE BOARD OF NURSING.

1 ~~38.~~ 39. "Psychiatrist" means a licensed physician who has completed
2 three years of graduate training in psychiatry in a program approved by the
3 American medical association or the American osteopathic association.

4 ~~39.~~ 40. "Psychologist" means a person WHO IS licensed under the
5 provisions of title 32, chapter 19.1 and WHO IS experienced in the practice
6 of clinical psychology.

7 ~~40.~~ 41. "Records" means all communications that are recorded in any
8 form or medium and that relate to patient examination, evaluation or
9 behavioral or mental health treatment. Records include medical records that
10 are prepared by a health care provider or other providers. Records do not
11 include:

12 (a) Materials that are prepared in connection with utilization review,
13 peer review or quality assurance activities, including records that a health
14 care provider prepares pursuant to section 36-441, 36-445, 36-2402 or
15 36-2917.

16 (b) Recorded telephone and radio calls to and from a publicly operated
17 emergency dispatch office relating to requests for emergency services or
18 reports of suspected criminal activity.

19 ~~41.~~ 42. "Screening agency" means a health care agency that is licensed
20 by the department and that provides those services required of such agency by
21 this chapter.

22 ~~42.~~ 43. "Social worker" means a person who has completed two years of
23 graduate training in social work in a program approved by the council of
24 social work education and who has experience in mental health.

25 ~~43.~~ 44. "State hospital" means the Arizona state hospital.

26 ~~44.~~ 45. "Superintendent" means the superintendent of the state
27 hospital.

28 Sec. 2. Section 36-514, Arizona Revised Statutes, is amended to read:

29 36-514. Visitation; telephone; correspondence; religious
30 freedom

31 Every person detained for evaluation or treatment pursuant to this
32 chapter shall have the following additional rights:

33 1. To be visited by the person's personal physician OR OTHER HEALTH
34 CARE PROFESSIONAL, guardian, agent appointed pursuant to chapter 32 of this
35 title, attorney and clergyman or any other person, subject to reasonable
36 limitations as the individual in charge of the agency may direct.

37 2. To have reasonable access to telephones between the hours of nine
38 9:00 a.m. and ~~nine~~ 9:00 p.m. to make and receive confidential calls. In
39 addition, a person who is confined pursuant to this title is allowed to make
40 two completed local telephone calls within two hours of initial confinement.
41 Long-distance calls are allowed if the patient can pay the agency for them or
42 can properly charge them to another number. The agency may restrict the
43 telephone privileges of a patient if it is notified by the person receiving
44 the calls that the person is being harassed by the calls and wishes them
45 curtailed or halted. Restriction of telephone privileges shall be entered

1 into the patient's clinical record and the information therein IN THE RECORD
2 shall be made available on request to the person, and that person's
3 attorney, guardian or agent appointed pursuant to chapter 32 of this title.

4 3. To be furnished with reasonable amounts of stationery and postage
5 and to be permitted to correspond by mail without censorship with any person.

6 4. To enjoy religious freedom and the right to continue the practice
7 of the person's religion in accordance with its tenets during the detainment,
8 except that this right may not interfere with the operation of the agency.

9 Sec. 3. Section 36-537, Arizona Revised Statutes, is amended to read:
10 36-537. Powers and duties of counsel

11 A. The medical director of the agency that conducted the evaluation,
12 at least seventy-two hours before the hearing, shall make available to the
13 patient's attorney copies of the petition for evaluation, THE prepetition
14 screening report, THE evaluation report, the patient's medical records for
15 the current admission and a list of alternatives to court-ordered treatment
16 that are used in similar cases with an explanation of why they are not
17 appropriate or available.

18 B. The patient's attorney, for all hearings, whether for evaluation or
19 treatment, shall fulfill the following minimal duties:

20 1. Within twenty-four hours of appointment, conduct an interview of
21 the patient. The attorney shall explain to the patient the patient's rights
22 pending court-ordered treatment, the procedures leading to court-ordered
23 treatment, the standards for court-ordered treatment, the alternative of
24 becoming a voluntary patient and whether stipulations at the hearing are
25 appropriate. If the attorney is appointed, the attorney also shall explain
26 that the patient can obtain the patient's own counsel at the patient's own
27 expense and that, if it is later determined that the person is not indigent,
28 the person will be responsible for the fees of the appointed attorney for
29 services rendered after the initial attorney-client conference.

30 2. At least twenty-four hours before the hearing, review the petition
31 for evaluation, prepetition screening report, evaluation report, petition for
32 treatment, the patient's medical records and the list of alternatives to
33 court-ordered treatment.

34 3. At least twenty-four hours before the hearing, interview the
35 petitioner, if available, and the petitioner's supporting witnesses, if known
36 and available.

37 4. At least twenty-four hours before the hearing, interview the
38 physicians OR THE PSYCHIATRIC AND MENTAL HEALTH NURSE PRACTITIONER who will
39 testify at the hearing, if available, and investigate the possibility of
40 alternatives to court-ordered treatment.

41 C. Failure of the attorney to fulfill at least the duties prescribed
42 by subsection B may be punished as contempt of court.

43 D. At a hearing held pursuant to this article, the patient's attorney
44 may enter stipulations on behalf of the patient.

1 Sec. 4. Section 36-538, Arizona Revised Statutes, is amended to read:
2 36-538. Independent evaluator

3 At all hearings conducted pursuant to sections 36-539, 36-543 and
4 36-546, a person has the right to have an analysis of ~~his~~ THE PERSON'S mental
5 condition by an independent evaluator. If the person is unable to afford
6 such AN evaluation, the court shall appoint an independent evaluator
7 acceptable to the patient from a list of physicians, PSYCHIATRIC AND MENTAL
8 HEALTH NURSE PRACTITIONERS WITH SUFFICIENT RELEVANT EXPERIENCE AS DETERMINED
9 BY THE MEDICAL DIRECTOR and psychologists who are willing to accept
10 court-appointed evaluations.

11 Sec. 5. Section 36-539, Arizona Revised Statutes, is amended to read:
12 36-539. Conduct of hearing; record; transcript

13 A. The medical director of the agency shall issue instructions to the
14 physicians OR THE PSYCHIATRIC AND MENTAL HEALTH NURSE PRACTITIONER treating
15 the proposed patient to take all reasonable precautions to ~~insure~~ ENSURE that
16 at the time of the hearing the proposed patient shall not be so under the
17 influence of or so suffer the effects of drugs, medication or other treatment
18 as to be hampered in preparing for or participating in the hearing. The
19 court at the time of the hearing shall be presented a record of all drugs,
20 medication or other treatment that the person has received during the
21 seventy-two hours immediately before the hearing.

22 B. The patient and the patient's attorney shall be present at all
23 hearings, and the patient's attorney may subpoena and cross-examine witnesses
24 and present evidence. The patient may choose to not attend the hearing or
25 the patient's attorney may waive the patient's presence. The evidence
26 presented by the petitioner or the patient shall include the testimony of two
27 or more witnesses acquainted with the patient at the time of the alleged
28 mental disorder, which may be satisfied by a statement agreed on by the
29 parties, and testimony of the two physicians who performed examinations in
30 the evaluation of the patient, which may be satisfied by stipulating to the
31 admission of the evaluating physicians' affidavits as required pursuant to
32 section 36-533, subsection B. The physicians shall testify as to their
33 personal examination of the patient. They shall also testify as to their
34 opinions concerning whether the patient is, as a result of mental disorder, a
35 danger to self or to others, is persistently or acutely disabled or is
36 gravely disabled and as to whether the patient requires treatment. Such
37 testimony shall state specifically the nature and extent of the danger to
38 self or to others, the persistent or acute disability or the grave
39 disability. If the patient is gravely disabled, the physicians shall testify
40 concerning the need for guardianship or conservatorship, or both, and whether
41 or not the need is for immediate appointment. Other persons who have
42 participated in the evaluation of the patient or, if further treatment was
43 requested by a mental health treatment agency, persons of that agency who are
44 directly involved in the care of the patient shall testify at the request of
45 the court or of the patient's attorney. Witnesses shall testify as to

1 placement alternatives appropriate and available for the care and treatment
2 of the patient. The clinical record of the patient for the current admission
3 shall be available and may be presented in full or in part as evidence at the
4 request of the court, the county attorney or the patient's attorney.

5 C. If the patient, for medical reasons, is unable to be present at the
6 hearing and the hearing cannot be conducted where the patient is being
7 treated or confined, the court shall require clear and convincing evidence
8 that the patient is unable to be present at the hearing and on such a finding
9 may proceed with the hearing in the patient's absence.

10 D. The requirements of subsection B OF THIS SECTION are in addition to
11 all rules of evidence and the Arizona rules of civil procedure, not
12 inconsistent with subsection B OF THIS SECTION.

13 E. A verbatim record of all proceedings under this section shall be
14 made by stenographic means by a court reporter if a written request for a
15 court reporter is made by any party to the proceedings at least twenty-four
16 hours in advance of such proceedings. If stenographic means are not
17 requested in the manner provided by this subsection, electronic means shall
18 be directed by the presiding judge. The stenographic notes or electronic
19 tape shall be retained as provided by statute.

20 F. A patient who has been ordered to undergo treatment may request a
21 certified transcript of the hearing. To obtain a copy, the patient shall pay
22 for a transcript or shall file an affidavit that the patient is without means
23 to pay for a transcript. If the affidavit is found true by the court, the
24 expense of the transcript is ~~to be~~ a charge on the county in which the
25 proceedings were held, or, if an intergovernmental agreement by the counties
26 has required evaluation in a county other than that of the patient's
27 residence, such expense may be charged to the county of the patient's
28 residence or in which the patient was found before evaluation.

29 Sec. 6. Section 36-540, Arizona Revised Statutes, is amended to read:

30 36-540. Court options

31 A. If the court finds by clear and convincing evidence that the
32 proposed patient, as a result of mental disorder, is a danger to self, is a
33 danger to others, is persistently or acutely disabled or is gravely disabled
34 and in need of treatment, and is either unwilling or unable to accept
35 voluntary treatment, the court shall order the patient to undergo one of the
36 following:

37 1. Treatment in a program of outpatient treatment.

38 2. Treatment in a program consisting of combined inpatient and
39 outpatient treatment.

40 3. Inpatient treatment in a mental health treatment agency, in a
41 veterans administration hospital pursuant to article 9 of this chapter, in
42 the state hospital or in a private hospital, if the private hospital agrees,
43 subject to the limitations of section 36-541.

1 B. The court shall consider all available and appropriate alternatives
2 for the treatment and care of the patient. The court shall order the least
3 restrictive treatment alternative available.

4 C. The court may order the proposed patient to undergo outpatient or
5 combined inpatient and outpatient treatment pursuant to subsection A,
6 paragraph 1 or 2 of this section if the court:

7 1. Determines that all of the following apply:

8 (a) The patient does not require continuous inpatient hospitalization.

9 (b) The patient will be more appropriately treated in an outpatient
10 treatment program or in a combined inpatient and outpatient treatment
11 program.

12 (c) The patient will follow a prescribed outpatient treatment plan.

13 (d) The patient will not likely become dangerous or suffer more
14 serious physical harm or serious illness or further deterioration if the
15 patient follows a prescribed outpatient treatment plan.

16 2. Is presented with and approves a written treatment plan that
17 conforms with the requirements of section 36-540.01, subsection B. If the
18 treatment plan presented to the court pursuant to this subsection provides
19 for supervision of the patient under court order by a mental health agency
20 that is other than the mental health agency that petitioned or requested the
21 county attorney to petition the court for treatment pursuant to section
22 36-531, the treatment plan must be approved by the medical director of the
23 mental health agency that will supervise the treatment pursuant to subsection
24 E of this section.

25 D. An order to receive treatment pursuant to subsection A, paragraph 1
26 or 2 of this section shall not exceed three hundred sixty-five days. The
27 period of inpatient treatment under a combined treatment order pursuant to
28 subsection A, paragraph 2 of this section shall not exceed the maximum period
29 allowed for an order for inpatient treatment pursuant to subsection F of this
30 section.

31 E. If the court enters an order for treatment pursuant to subsection
32 A, paragraph 1 or 2 of this section, all of the following apply:

33 1. The court shall designate the medical director of the mental health
34 treatment agency that will supervise and administer the patient's treatment
35 program.

36 2. The medical director shall not use the services of any person,
37 agency or organization to supervise a patient's outpatient treatment program
38 unless the person, agency or organization has agreed to provide these
39 services in the individual patient's case and unless the department has
40 determined that the person, agency or organization is capable and competent
41 to do so.

42 3. The person, agency or organization assigned to supervise an
43 outpatient treatment program or the outpatient portion of a combined
44 treatment program shall be notified at least three days before a referral.
45 The medical director making the referral and the person, agency or

1 organization assigned to supervise the treatment program shall share relevant
2 information about the patient to provide continuity of treatment.

3 4. During any period of outpatient treatment under subsection A,
4 paragraph 2 of this section, if the court, on motion by the medical director
5 of the patient's outpatient mental health treatment facility, determines that
6 the patient is not complying with the terms of the order or that the
7 outpatient treatment plan is no longer appropriate and the patient needs
8 inpatient treatment, the court, without a hearing and based on the court
9 record, the patient's medical record, the affidavits and recommendations of
10 the medical director, and the advice of staff and physicians OR THE
11 PSYCHIATRIC AND MENTAL HEALTH NURSE PRACTITIONER familiar with the treatment
12 of the patient, may enter an order amending its original order. The amended
13 order may alter the outpatient treatment plan or order the patient to
14 inpatient treatment pursuant to subsection A, paragraph 3 of this section.
15 The amended order shall not increase the total period of commitment
16 originally ordered by the court or, when added to the period of inpatient
17 treatment provided by the original order and any other amended orders, exceed
18 the maximum period allowed for an order for inpatient treatment pursuant to
19 subsection F of this section. If the patient refuses to comply with an
20 amended order for inpatient treatment, the court may authorize and direct a
21 peace officer, on the request of the medical director, to take the patient
22 into protective custody and transport the patient to the agency for inpatient
23 treatment. When reporting to or being returned to a treatment agency for
24 inpatient treatment pursuant to an amended order, the patient shall be
25 informed of the patient's right to judicial review and the patient's right to
26 consult with counsel pursuant to section 36-546.

27 5. During any period of outpatient treatment under subsection A,
28 paragraph 2 of this section, if the medical director of the outpatient
29 treatment facility in charge of the patient's care determines, in concert
30 with the medical director of an inpatient mental health treatment facility
31 who has agreed to accept the patient, that the patient is in need of
32 immediate acute inpatient psychiatric care because of behavior that is
33 dangerous to self or to others, the medical director of the outpatient
34 treatment facility may order a peace officer to apprehend and transport the
35 patient to the inpatient treatment facility pending a court determination on
36 an amended order under paragraph 4 of this subsection. The patient may be
37 detained and treated at the inpatient treatment facility for a period of no
38 more than forty-eight hours, exclusive of weekends and holidays, from the
39 time that the patient is taken to the inpatient treatment facility. The
40 medical director of the outpatient treatment facility shall file the motion
41 for an amended court order requesting inpatient treatment no later than the
42 next working day following the patient being taken to the inpatient treatment
43 facility. Any period of detention within the inpatient treatment facility
44 pending issuance of an amended order shall not increase the total period of
45 commitment originally ordered by the court or, when added to the period of

1 inpatient treatment provided by the original order and any other amended
2 orders, exceed the maximum period allowed for an order for inpatient
3 treatment pursuant to subsection F of this section. If a patient is ordered
4 to undergo inpatient treatment pursuant to an amended order, the medical
5 director of the outpatient treatment facility shall inform the patient of the
6 patient's right to judicial review and to consult with an attorney pursuant
7 to section 36-546.

8 F. The maximum periods of inpatient treatment that the court may
9 order, subject to the limitations of section 36-541, are as follows:

10 1. Ninety days for a person found to be a danger to self.

11 2. One hundred eighty days for a person found to be a danger to
12 others.

13 3. One hundred eighty days for a person found to be persistently or
14 acutely disabled.

15 4. Three hundred sixty-five days for a person found to be gravely
16 disabled.

17 G. If, on finding that the patient is gravely disabled, the court also
18 finds that the evidence indicates that the patient is or may be in need of
19 guardianship or conservatorship, or both, the court shall order an
20 investigation concerning the need for a guardian or conservator, or both, and
21 shall appoint a suitable person or agency to conduct the investigation. The
22 appointee may include the mental health treatment agency that is providing
23 inpatient or outpatient treatment, a court-appointed visitor or the public
24 fiduciary if there is no person willing and qualified to act in that
25 capacity. The court shall give notice of the appointment to the appointee
26 within three days of the appointment. The appointee shall submit the report
27 of the investigation to the court within twenty-one days. The report shall
28 include recommendations as to who should be guardian or who should be
29 conservator, or both, and a report of the findings and reasons for the
30 recommendation. If the investigation and report so indicate, the court shall
31 order the appropriate person to submit a petition to become the guardian or
32 conservator, or both, of the patient.

33 H. If, on finding that a patient is gravely disabled, the court also
34 finds that the patient is in need of immediate guardianship for the purpose
35 of protection of the patient or for the purpose of carrying out alternatives
36 to court-ordered treatment, the court may appoint as a temporary guardian a
37 suitable person or the public fiduciary, if there is no person qualified and
38 willing to act in that capacity.

39 I. If, on finding that a patient is gravely disabled, the court also
40 learns that the patient has a guardian appointed under title 14, the court
41 may with notice MAY impose on the existing guardian additional duties
42 pursuant to section 14-5312.01.

1 J. The court shall file a report as part of the court record on its
2 findings of alternatives for treatment.

3 K. Treatment shall not include psychosurgery, lobotomy or any other
4 brain surgery without specific informed consent of the patient or the
5 patient's legal guardian and an order of the superior court in the county in
6 which the treatment is proposed, approving with specificity the use of the
7 treatment.

8 L. The medical director or any person, agency or organization used by
9 the medical director to supervise the terms of an outpatient treatment plan
10 shall not be held civilly liable for any acts committed by a patient while on
11 outpatient treatment if the medical director, person, agency or organization
12 has in good faith followed the requirements of this section.

13 M. A peace officer who in good faith apprehends and transports a
14 patient to an inpatient treatment facility on the order of the medical
15 director of the outpatient treatment facility pursuant to subsection E,
16 paragraph 5 of this section shall not be subject to civil liability.

17 N. If a person has been found, as a result of a mental disorder, to
18 constitute a danger to self or others or to be persistently or acutely
19 disabled or gravely disabled and the court enters an order for treatment
20 pursuant to subsection A of this section, the court shall grant access to the
21 person's name, date of birth, social security number and date of commitment
22 to the department of public safety to comply with the requirements of title
23 13, chapter 31 and title 32, chapter 26.

24 Sec. 7. Section 36-545.04, Arizona Revised Statutes, is amended to
25 read:

26 36-545.04. Costs of court proceedings; compensation for
27 evaluation and testimony

28 A. Except as provided in this chapter, costs of court proceedings and
29 cost of services provided by a county pursuant to article 4 are a charge
30 against the county in which the patient resided or was found ~~prior to~~ BEFORE
31 hospitalization. The clerk of the superior court in the county where the
32 proceedings are held shall certify to the board of supervisors of the county
33 where the patient resided or was found ~~prior to~~ BEFORE hospitalization that
34 such proceedings were held and the amount of the balance of the incurred
35 costs.

36 B. If a physician, psychologist, PSYCHIATRIC AND MENTAL HEALTH NURSE
37 PRACTITIONER or social worker is not otherwise compensated for evaluating a
38 person or for testifying at a hearing, or both, the physician, psychologist,
39 NURSE PRACTITIONER or social worker shall be paid by the county, an amount
40 determined reasonable by the court, subject to the same limitations as
41 imposed upon ON compensation for attorneys in hearings, as provided by
42 section 13-4013. These payments shall be made as a part of the costs of
43 court proceedings as in subsection A of this section.

1 Sec. 8. Section 36-546, Arizona Revised Statutes, is amended to read:
2 36-546. Judicial review; right to be informed; request;
3 jurisdiction

4 A. In addition to the procedure for applying for a writ of habeas
5 corpus, as provided in title 13, chapter 38, article 26, a patient receiving
6 court-ordered treatment or any person acting on ~~his~~ THE PATIENT'S behalf may
7 request the patient's release pursuant to the following:

8 1. A request in writing may be presented to any member of the
9 treatment staff of the agency providing the patient's treatment. The request
10 may be made on a prescribed form ~~which~~ THAT shall be prepared by the facility
11 and made available for use by any person. The completed form shall identify:

12 (a) The patient being treated and the agency at which ~~he~~ THE PATIENT
13 is being treated.

14 (b) The person to whom the request for release was made.

15 (c) The person making the request for release, indicating whether the
16 person is the patient being treated or someone acting on ~~his~~ THE PERSON'S
17 behalf.

18 2. The request, when signed and dated by the person making the request
19 for release, shall be delivered to the medical director of the agency.
20 Within three days of receipt of the request, the medical director shall
21 deliver the form, along with a current psychiatric report of the patient's
22 condition, to the clerk of the court. If the person presenting the request
23 refuses to sign the form, the medical director of the agency shall proceed as
24 if the form had been signed and shall note on the form the circumstances as
25 to why the form was not signed.

26 B. The patient shall be informed of ~~his~~ THE PATIENT'S right to
27 judicial review by the medical director of the agency and ~~his~~ THE PATIENT'S
28 right to consult with counsel at least once each sixty days while ~~he~~ THE
29 PATIENT is undergoing court-ordered treatment. The notification required by
30 this subsection shall be recorded in the clinical record of the patient by
31 the individual who gave the notice.

32 C. With the exception of requests made pursuant to section 36-540,
33 subsection E, paragraphs 4 and 5 and section 36-540.01, subsection J for
34 judicial review, a request for judicial review may not be made sooner than
35 sixty days after the issuance of the order for treatment or a hearing on a
36 previous petition for habeas corpus or the issuance of the court order or
37 other final resolution determining a previous request for judicial review by
38 the patient.

39 D. Judicial review shall be in the superior court in the county in
40 which the patient is being treated. That court may review the additional
41 material presented and enter its order without necessity of further hearing.

42 E. The reviewing court may order a further hearing ~~upon~~ ON the
43 affidavit of the attorney for the patient setting forth the need for further
44 evidentiary hearing and the reasons why the hearing is necessary ~~prior to~~
45 BEFORE the time set for the release of the patient.

1 F. The patient shall be informed of ~~his~~ THE PATIENT'S right to consult
2 an attorney by the person or court to whom ~~he~~ THE PATIENT makes ~~his~~ THE
3 request for release at the time ~~he~~ THE PATIENT makes ~~such~~ THE request and, in
4 the case of confinement in an agency, by the reviewing court within one day
5 of its receipt of notice from the medical director of the agency wherein
6 WHERE the patient is being treated. The patient shall be permitted to
7 consult an attorney to assist ~~him~~ in preparation of a petition for the writ
8 of habeas corpus and to represent ~~him~~ THE PATIENT in the hearing. If ~~he~~ THE
9 PATIENT is not represented by an attorney, the reviewing court ~~shall~~, within
10 two days of its notice to the patient of ~~his~~ THE PATIENT'S right to counsel,
11 SHALL appoint an attorney to assist ~~him~~ THE PATIENT in the preparation of a
12 petition and to represent ~~him~~ THE PATIENT in the hearing.

13 G. The medical director of the mental health treatment agency, at
14 least twenty-four hours ~~prior to~~ BEFORE the hearing, shall provide the
15 patient's attorney with a copy of the patient's medical records.

16 H. The patient's attorney shall fulfill all of the following minimal
17 duties:

18 1. Within twenty-four hours of appointment, conduct an interview with
19 the patient.

20 2. At least twenty-four hours ~~prior to such~~ BEFORE THE hearing,
21 interview the patient's treatment physician OR PSYCHIATRIC AND MENTAL HEALTH
22 NURSE PRACTITIONER if available.

23 3. ~~Prior to~~ BEFORE the hearing, examine the clinical record of the
24 patient.

25 4. ~~Prior to~~ BEFORE the hearing, examine the patient's court records as
26 to ~~his~~ THE PATIENT'S involuntary treatment.

27 I. An attorney who does not fulfill the duties prescribed by
28 subsection H of this section is subject to contempt of court.

APPROVED BY THE GOVERNOR MAY 7, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2010.